



EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

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MEMORANDUM FOR: JOHN NORTON MOORE
Chairman, The NSC Interagency Task Force
On The Law of The Sea

FROM: Edward G. Sanders

SUBJECT: IOS Negotiating Instructions for the March
Session

I concur with your draft memo to the President recommending that no new negotiating instructions are required for the March IOS Session. My staff will forward comments to you on the seven issues raised in your cover memo.

Policy guidance will be required, however, in interpreting present negotiating instructions with regard to International Seabed Resource Authority (ISRA) participation in commodity agreements and compensatory financing schemes designed to protect land-based producers of minerals to be mined in the seabed. To develop such guidance, an eighth point similar to the attached draft should be added to those discussed in your cover memo.

Attachment

On file OMB release instructions apply.

Recommendations of the Department of Commerce's
Marine Petroleum and Minerals Advisory Committee

- (1) Assurance of access by the United States and its nationals on a reasonable and nondiscriminatory basis to mineral resources in deep seabed areas seaward of national jurisdiction, coupled with security of tenure.
- (2) Assurance that investment agreements or other contractual arrangements between a private operator and either a state or an international authority relating to mineral resources exploitation of the seabed, whether in the continental margin subject to resource jurisdiction of a coastal state or in the area beyond national jurisdiction, shall be binding upon the parties to such investment agreements or to other contractual arrangements according to their terms.
- (3) Assurance that disputes arising from such investment agreements or other contractual arrangements shall be referable to disputes settlement institutions and procedures which shall be essential elements of a Law of the Sea Treaty, and that a private party to such an agreement or arrangement shall have a right to refer such a dispute to arbitration under such institutions and procedures if its state of nationality does not invoke the disputes settlement procedures in respect to a particular dispute.
- (4) Assurance that basic oceanographic scientific research, including both national and international programs, will be encouraged and will be accorded the greatest possible freedom of access to oceanic water masses and the underlying sea floor and seabed.
- (5) Assurance that merchant vessels will have a right of unimpeded passage through straits used for international transit, in territorial waters, and in the superjacent waters of any coastal state's economic zone, where such state may exercise resource jurisdiction, provided such vessels are in transit and are in compliance with internationally agreed standards for safety and prevention of pollution.
- (6) Adoption of reasonable environmental and safety standards and safeguards for the overall benefit of mankind as an integral part of marine exploration and mineral resource development.

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Attachment

8. Protection of Land-Based Producers

Present instructions do not offer the detailed policy guidance the delegation needs to assure the negotiating positions in Committee I are consistent with overall U.S. commodity policy and the fundamental U. S. negotiating objective of assuring "guaranteed nondiscriminatory access by U. S. firms to deep seabed resources under reasonable terms, coupled with security of tenure." LDC pressure to increase their control over raw materials production and trade increasingly impinges on the deep seabed negotiations. At recent intersessional negotiations in New York, LDC negotiating strategy focused on two related commodity issues: (1) participation by ISRA in any international commodity agreements that might be negotiated for seabed minerals; and, (2) compensatory financing for land-based producers.

Any proposals that imply establishment of international commodity agreements raise serious issues of overall U.S. commodity policy which must first be coordinated and cleared with the EPB Commodity Policy Coordinating Committee. Moreover, ISRA's participation in any international commodity agreement which directly or indirectly controls production or prices of State-sponsored firms is inconsistent with present negotiating instructions.

If accommodation of land-based producers' interest is required, compensatory financing rather than commodity agreements should be used. The U. S. delegation's position should be that the liberalized IMF compensatory financing facility now being negotiated will provide adequate protection for land-based producers against any loss of overall export revenues. Though current instructions authorize adjustment assistance, use of such authority should be avoided if possible and exercised only as a final fall-back position. OMB and other agencies responsible for international commodity policy should approve any such proposal prior to its presentation to the Conference. If an adjustment assistance scheme proves necessary, funds should accrue from profit sharing with mining firms rather than from government outlays.